



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2019-0150]**

**RIN 1625- AA08**

### **Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a recurring special local regulation for certain waters of Kailua Bay, Hawaii. This action is necessary to provide for the safety of life on these navigable waters located at Kailua-Kona, HI, during the swim portion of the Ironman World Championship Triathlon and practice swim held on consecutive weekends annually in October. On both days, the swim events are held from 3:45 a.m. to 11 a.m. This rulemaking prohibits persons and vessels from being in the regulated area each day of the event unless authorized by the Captain of the Port Honolulu.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0150 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Chief Jason Olney, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522-8265, email [jason.r.olney@uscg.mil](mailto:jason.r.olney@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
SLR	Special Local Regulation
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On April 18, 2019, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (84 FR 16223) entitled “Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii.” In the NPRM we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this swim event. During the comment period that ended May 18, 2019, we received four comments.

This annual event consists of a practice swim and then a race swim held on two consecutive weekends in October. This event is a world famous triathlon with participants coming from around the world to compete. The event occurs within the ocean waters of Kailua Bay, HI. Each swim event consists of 2,500 participants swimming a 2.4 mile (4,224 yard) marked race course located in navigable shallow ocean waters. Because of increased spectator pleasure craft drawn to support and view the Ironman swim event, spectator vessel traffic poses a significant safety hazard due to the

limited maneuverability of swim participants and vessels navigating in close proximity to the designated area.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Due to the comments received and evaluation of those comments, the Coast Guard is unable to publish this final rule in time to meet the 30 day requirement. Delaying the effective date would be contrary to the rule's objectives of protecting safety of life on the navigable waters in the vicinity of the large swim event.

### **III. Legal Authority and Need for Rule**

The COTP Honolulu is establishing a recurring special local regulation to be enforced from 3:45 a.m. to 11 a.m., on consecutive weekends in October annually. For both the race itself and the practice swim event, six hours are required for all participants to complete the swim course. The regulated area would cover all navigable waters of Kailua Bay within 100 yards adjacent to the 2.4 mile (4,224 yards) swim course, starting at the shoreline northeast of Kailua Pier at 19°38.341' N., 155°59.782' W; thence southeast to 19°37.416' N., 155°59.444' W; thence southwest to 19°37.397' N., 155°59.500' W; thence northwest to 19°38.150' N., 155°59.760' W., thence north and back to Kailua Pier at 19°38.398' N., 155°59.816' W., and returning along the pier to the originating point on the shoreline at to 19°38.341' N., 155°59.782' W. The statutory basis for this rulemaking is 46 U.S.C. 70041, which gives the coast Guard, under a delegation from the Secretary of the Department of Homeland Security regulatory authority to enforce the Ports and Waterways Safety Act.

The COTP has determined that potential safety hazards exist necessitating the

movement restriction of all vessels and persons, including event participants, in the regulated area. The purpose of this rule is to ensure safety of vessels and navigable waters in the special local regulation before, during, and after the event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received four comments on our NPRM published April 18, 2019.

The Coast Guard received three comments in support of the proposed rule, noting that additional Federal safety and security measures not only provides another layer of protection to swimmers in the water but promotes safety to all mariners in the race vicinity.

The Coast Guard received one comment regarding an adjustment to the proposed start time in the NPRM of 5:00 AM for both race days in October, noting that during past races, participants would encounter unfavorable swim conditions. The commenter suggested moving the 5:00 AM start time to 3:45 AM, to allow waters to calm and adjust race times if necessary. Additionally, the Coast Guard would have ample time to ensure the race course is clear of vessels and other non-participants.

We agree, and the final rule includes language stating the start time for both races in October.

The Coast Guard received one notification from event sponsor that race days are subject to change from Saturdays to Sundays depending on Cruise ship operations. Cruise Ship Operations occurring in the Kailua-Kona Security Zone, 33 CFR 165.30

prohibit persons or vessels from entering without express permission of the Captain of the Port Honolulu.

We agree, and the proposed final rule includes a change in language from “consecutive Saturdays” to “consecutive weekends” to accommodate race day changes.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, event history, time of day, and time of year of the regulated area which would impact a small designated area of Kailua Bay. Vessel traffic will be able to safely transit around the event. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulation and will promulgate a Notice of Enforcement and issue a Local Notice to Mariners each year. Finally, the rule would allow vessels to seek permission to enter the regulated area, transit around the race area, and vessel traffic

would be able to safely transit the regulated area once the COTP of Honolulu's PATCOM deems it safe to do so.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually

and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.



## **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add §100.1402 to read as follows:

#### **§100.1402 Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii.**

- (a) **Definitions.** As used in this section:

**Buffer area** is a neutral 100-yard area that surrounds the perimeter of the course area's navigable waters as described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a course area and spectator viewing areas.

**Captain of the Port (COTP) Honolulu** means the Commander, U.S. Coast Guard Sector Honolulu or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

**Coast Guard Patrol Commander (PATCOM)** means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated as PATCOM by the

Commander, Coast Guard Sector Honolulu.

Course area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of the event swim area within the overall regulated area defined by this section.

Enforcement vessels are designated vessels authorized by the COTP Honolulu, the event PATCOM, or COTP Honolulu's designated representatives to support the safety and security of the marine event.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Honolulu with a commissioned, warrant, or petty officer on board.

Participant means any persons registered with the event sponsor as participating in the Ironman Triathlon or practice swim.

Regulated area is the combined course area and buffer area.

Spectators are all persons and vessels not registered with the sponsor as participants, support vessels, or enforcement vessels.

(b) Location. All coordinates reference Datum NAD 1983.

(1) Regulated area. All navigable waters within Kailua Bay and encompasses the course area and surrounding 100-yard buffer area. This course area and 100-yard buffer area extends from the surface of the water to the ocean floor.

(2) Course area. The 2.24 mile (4,224 yards) swim course is a temporary marked swim course within the regulated area located in Kailua Bay.

(3) Buffer area. All navigable waters 100 yards outside of the perimeter of the course area, described in paragraph (c)(4) of this section.

(c) Special local regulations. (1) The COTP Honolulu or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Honolulu or PATCOM may terminate the event at any time the COTP Honolulu or PATCOM believes it necessary to do so for the protection of life.

(2) Except for participants and safety support vessels, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) Support and enforcement vessels consist of any local law enforcement and sponsor provided vessels assigned or approved by the COTP Honolulu, the event PATCOM, or COTP Honolulu designated representatives, to patrol the regulated area.

(4) The regulated area consists of all navigable waters starting at the shoreline northeast of Kailua Pier at 19°38.341' N., 155°59.782' W; thence southeast to 19°37.416' N., 155°59.444' W; thence southwest to 19°37.397' N., 155°59.500' W; thence northwest to 19°38.150' N., 155°59.760' W., thence north and back to Kailua Pier at 19°38.398' N., 155°59.816' W., and returning along the pier to the originating point on the shoreline at to 19°38.341' N., 155°59.782' W.

(5) Spectators shall not enter into, anchor, block, loiter, or impede the transit of participants or support/enforcement vessels in the regulated area during the

enforcement of this section, unless cleared for entry by the COTP Honolulu, the event PATCOM, or the COTP's designated representatives.

(6) Persons desiring to transit the regulated area identified may contact the COTP Honolulu in advance at the Sector Honolulu Command Center telephone number (808) 842-2600 and (808) 842-2601 or immediately prior to or during the event to the COTP Honolulu's PATCOM or designated representative on VHF-FM marine channel 16 (156.8 Mhz) to seek permission to transit or remain in the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu, the event PATCOM, or the COTP's designated representative and proceed at the minimum speed necessary to maintain a safe course while in the area.

(7) If enforcement of the regulated area is no longer necessary, the COTP Honolulu, event Patrol Commander, or COTP designated representative will inform the public through radio broadcasts that the regulated area is no longer being enforced.

(d) Enforcement officials. The Coast Guard may be assisted with event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) Enforcement period. The marine event and special local regulation in this section will be enforced from 3:45 a.m. to 11 a.m. on the first two weekends in October annually. The Coast Guard will publish a notice in the Fourteenth Coast Guard District Local Notice to Mariners, a Notice of the Enforcement in the FEDERAL REGISTER, and issue a marine information broadcast on VHF-FM marine band radio on channel 16 announcing specific event date and times.

Dated: September 18, 2019.

A.B. Avanni,  
Captain, U.S. Coast Guard,  
Captain of the Port Honolulu.

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